UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

RADNET MANAGEMENT, INC. d/b/a SAN FERNANDO VALLEY INTERVENTIONAL RADIOLOGY AND AND IMAGING CENTER	:	Case No. 31-CA-222587 Case No. 31-CA-225390
and	:	
RADNET MANAGEMENT, INC. d/b/a SAN FERNANDO ADVANCED IMAGING CENTER	:	
and	:	
NATIONAL UNION OF HEALTHCARE WORKERS	:	

EMPLOYER RADNET MANAGEMENT, INC. d/b/a SAN FERNANDO VALLEY INTERVENTIONAL RADIOLOGY AND IMAGING CENTER'S MOTION FOR RECONSIDERATION OF BOARD'S DECISION AND ORDER

Respectfully Submitted by: Kaitlin A. Kaseta
Counsel for the Employer
1809 Carolina Park Boulevard
Mount Pleasant, SC 29466
(860) 307-3223
kaitlinkaseta@gmail.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

INTRODUCTION

Pursuant to §102.48(c)(1) of the Rules and Regulations of the National Labor Relations Board, as amended, RadNet Management, Inc. d/b/a San Fernando Valley Interventional Radiology and Imaging Center (hereafter, the "Employer") hereby moves the National Labor Relations Board (hereafter, the "Board") for reconsideration of the Board's Decision and Order in RadNet Management, Inc. d/b/a San Fernando Valley Interventional Radiology and Imaging Center and RadNet Management, Inc. d/b/a San Fernando Valley Advanced Imaging Center, issued by the Board on February 14, 2019 (hereafter, the "Board's Decision").

STATEMENT OF FACTS AND PROCEEDINGS

1.) The Representation Case Proceedings

On November 9, 2017, the Employer entered into a Stipulated Election Agreement with the Board and the National Union of Healthcare Workers (hereafter, the "Union") that called for the Board to supervise an election whereby the Employer's technical employees, excluding, *inter alia*, all guards, would vote as to whether they wished to be represented by the Union for purposes of collective bargaining. MSJ Ex. 4. [1] The Union prevailed in the December 6, 2017 election by

[1] Citations to the Exhibits transmitted to the Board in connection with the Counsel for the General Counsel's Motion for Summary Judgment and shall be notated "MSJ Ex. ____" and "MSJ J. Ex. ___". Citations to the Counsel for the General Counsel's Motion for Summary Judgment shall be notated "MSJ ___". Citations to the Notice to Show Cause shall be notated "NSC ___". Citations to the

two votes, and on December 13, 2017, the Employer filed Objections to the election. MSJ Exs. 5, 10. In particular, the Employer alleged that the Union had materially misrepresented itself to eligible voters, by failing to disclose the Union's affiliation with the International Association of Machinists and Aerospace Workers (hereafter, the "IAMAW"), and that the Union and / or IAMAW, as an agent of the Union, had harassed the Employer and eligible voters by filing false police reports against facilities operated by RadNet Management, Inc. and against employees of RadNet Management, Inc. during the course of the Union's campaign. MSJ Ex. 5. The Employer's Objections further asserted that the Board Agent conducting the election had erred by failing and / or refusing to designate a "no electioneering zone" surrounding the polls, misrepresenting the challenged ballot process to an eligible voter, and permitting the Union's observer to use a writing implement to make marks in a book during polling. MSJ Ex. 5. Finally, the Employer's Objections alleged that the Board had erred by conducting an election where the Union's affiliation with the IAMAW was not disclosed, by conducting an election in a unit that contained statutory guards in violation of Section 9(b)(3) of the Act,

---

Employer's Response to the Notice to Show Cause shall be notated "NSC Response ___". Citations to the Employer's Amended Answer shall be notated "Amended Answer ___." Citations to the Counsel for the General Counsel's Reply to the Employer's Response to the Notice to Show Cause shall be notated "Reply to NSC Response ___". Citations to the Board's Decision shall be notated "Decision ___".

and by conducting an election pursuant to Board's unlawful revised election rules. MSJ Ex. 5.

On January 12, 2018, the Regional Director for Region 31 of the Board issued a Partial Decision and Notice of Hearing in the case, overruling all of the Employer's Objections, except for Objection No. 2, which alleged that the Union, or the IAMAW as an agent of the Union, had engaged in harassment of eligible voters, by filing false police reports against RadNet Management, Inc. facilities and employees. MSJ Ex. 7. The Regional Director noted that, in the Employer's Offer of Proof filed in support of its Objections, the Employer had indicated that at least two employees had been the subject of multiple false police reports during the Union's organizing campaign, in both cases after they had stopped communicating with the Union about the Union's campaign. MSJ Ex. 7. Furthermore, the Employer's Offer of Proof noted that three separate RadNet Management, Inc. facilities had been the subject of numerous false police reports during the Union's organizing campaign. MSJ Ex. 7. Finally, the Regional Director noted the Employer's intent to subpoena additional information relevant to its Objection from the Union, the IAMAW, and the Los Angeles Police Department (hereafter, the "LAPD"). MSJ Ex. 7. On the basis of the Employer's Offer of Proof, the Regional Director held that there were "substantial and material issues of fact", and set the Employer's Objection No. 2 for hearing. MSJ Ex. 7.

Thereafter, an evidentiary hearing was held on January 29 and 30, 2018 before a Hearing Officer of the Board, in connection with which the Employer issued a number of subpoenas to representatives and agents of the Union, the IAMAW, and the LAPD in support of its contention that either the Union or the IAMAW, acting as an agent of the Union, had harassed and intimidated eligible voters by filing false police reports against the facilities and employees of RadNet Management, Inc. MSJ Ex. 10. The LAPD and IAMAW did not respond to the Employer's subpoenas, and the Employer requested that Region 31 enforce the Employer's subpoenas. MSJ Ex. 10. The Regional Director refused to enforce the Employer's subpoenas, and the Hearing Officer closed the record in the case before the five-day period for response to the Employer's subpoenas had run, effectively preventing the Employer from presenting evidence relevant to its Objection No. 2. See MSJ Ex. 10. After the Hearing Officer ordered the evidentiary record closed, she issued a Report and Recommendation on Objections on February 6, 2018, in which she claimed that the Employer had failed to produce evidence in support of its Objection No. 2 during the hearing, and recommended that Employer's Object No. 2 be overruled in its entirety, and that a Certification of Representative be issued to the Union by Region 31 of the Board. MSJ Ex. 10.

On February 20, 2018, the Employer filed Exceptions to the Hearing Officer's Report and Recommendation on Objections, and a Brief in Support of

Exceptions. MSJ Exs. 14, 15. In its Brief in Support of Exceptions, the Employer argued that the Hearing Officer had erred by prematurely closing the record, and that the Regional Director had erred by refusing to enforce the Employer's subpoenas. MSJ Ex. 15. The Employer argued that these adverse rulings had prevented the Employer from presenting a significant amount of evidence in support of its Objection No. 2. MSJ Ex. 15. Thereafter, on March 14, 2018, the Regional Director for Region 31 issued a Decision and Certification of Representative in favor of the Union. MSJ Ex. 16. In her Decision and Certification of Representative, the Regional Director for Region 31 affirmed the Hearing Officer's recommendation that Objection No. 2 should be overruled, holding that the Hearing Officer's closure of the record was proper, and that the Regional Director's denial of the Employer's subpoenas was appropriate. MSJ Ex. 16.

On March 28, 2018, the Employer filed a Request for Review of the Regional Director's Decision and Certification of Representative. MSJ Ex. 18. In its Request for Review, the Employer argued that the Regional Director had erred by overruling each of the Employer's Objections, alleged that each of the Objections should have been set for hearing (or in the case of Objection No. 2, that the hearing should have been conducted fairly and properly), and that on the basis of each Objection filed by the Employer, the election should have been set aside.

MSJ Ex. 19. On July 25, 2018, the Board denied the Employer's Request for Review, holding simply that the Request for Review raised "no substantial issues warranting review". MSJ Ex. 20.

2.) The Unfair Labor Practice Proceedings

On April 4, 2018, the Union sent the Employer a letter, demanding that the Employer commence negotiations with the Union on the basis of the Certification of Representative that had been issued by the Regional Director of Region 31. See MSJ J. Ex. 4. On June 1, 2018, the Employer responded to the Union, and stated that the Employer did not recognize the Union as the collective bargaining representative of any of its employees, due to the issues with the conduct of and affecting the underlying election, as detailed in the Employer's then-pending Request for Review of the Regional Director's Decision and Certification of Representative. MSJ J. Ex. 4. On July 26, 2018, the Union sent the Employer a second demand to bargain by email. MSJ J. Ex. 5. Thereafter, the Employer responded to the Union by letter on July 27, 2018, again explaining to the Union that the Employer was testing the Certification of Representative that had been issued to the Union by Region 31 of the Board, and therefore did not recognize, and would not bargain with, the Union. MSJ J. Ex. 7.

On June 21, 2018 and August 9, 2018, the Union filed the underlying Unfair Labor Practice Charges (hereafter, the "Charges") against the Employer and

RadNet Management, Inc. d/b/a San Fernando Valley Advanced Imaging Center (hereafter, "SFV Advanced") in the instant case. MSJ J. Exs. 23, 24. On August 22, 2018, the Regional Director for Region 31 of the Board issued a Consolidated Complaint and Notice of Hearing, thereby consolidating the two Charges in the instant case, alleging that the Employer and SFV Advanced had both failed and refused to recognize and bargain with the Union in violation of Sections 8(a)(5) and (1) of the National Labor Relations Act (hereafter, the "Act"). MSJ Ex. 25. On September 5, 2018, the Employer and SFV Advanced filed an Answer to the Consolidated Complaint, in which the Employer and SFV Advanced denied that the units certified by Region 31 constituted appropriate units for the purpose of collective bargaining, pursuant to Section 9(b) of the Act, denied that the Union was properly certified, denied that they had thus "failed or refused" to recognize and bargain with the Union, and denied that their failure to recognize and bargain with the Union constituted a violation of the Act. [2] MSJ Ex. 26.

On October 10, 2018, Counsel for the General Counsel filed a Motion for Summary Judgment in the case at bar, contending that there were "no bona fide" or "genuine" issues of fact that warranted a hearing before an Administrative Law

[2] The Employer and SFV Advanced also denied a poorly-worded, and thus factually inaccurate, allegation that the Union had requested to bargain with the Employer and SFV Advanced "as the exclusive collective bargaining representative of the employees at issue. See MSJ Ex. 26; *compare to* MSJ J. Ex. 5.

Judge. MSJ 12. Counsel for the General Counsel relied heavily on Board precedent for the assertion that the Employer was precluded from "relitigating" issues from the representation proceedings in the instant unfair labor practice case. MSJ 11-12, 13. Finally, Counsel for the General Counsel asserted that the Employer had not presented "any newly discovered or previously unavailable evidence", and claimed that the Employer had not raised "any special circumstances that would require the Board to re-examine the decisions made in the underlying representation proceedings." MSJ 13. On October 17, 2018, the Board issued an Order Transferring Proceedings to the Board and Notice to Show Cause (hereafter, the "Notice to Show Cause"), in which the Board transferred the instant case to the Board, and required any party seeking to oppose the Counsel for the General Counsel's Motion for Summary Judgment to do so in writing on or before October 31, 2018. NSC 1.

In response to the Board's Notice to Show Cause, the Employer filed a Response to Notice to Show Cause and Opposition to General Counsel's Motion for Summary Judgment (hereafter, the "Employer's Response") on November 5, 2018. [3] In the Employer's Response, the Employer raised a number of Board precedents – specifically, Sub Zero Freezer Co., 271 NLRB 47 (1984); Heuer

[3] On October 29, 2018, the Employer was granted an extension of time to file its Response to the Notice to Show Cause through November 5, 2018. See EOT Response, 10/29/2018.

International Trucks, 273 NLRB No. 57 (1984); Atlanta Hilton & Towers, 273 NLRB 87 (1985); and St. Francis Hospital, 271 NLRB 948 (1984) – in all of which the Board had reviewed the representation case proceedings that preceded the "technical refusal-to-bargain" unfair labor practice charges in those cases, and had, in some cases, not only dismissed the unfair labor practice charge, but also vacated the certification of representative that had been previously issued to the union in the prior representation case proceedings. NSC Response 5. The Employer further pointed out that both Sub Zero Freezer Co. and the instant case both involved allegations, raised during the representation proceedings, that the unions attempting to organize employees had threatened and intimidated eligible employees. NSC Response 5. Accordingly, the Employer requested that the Board deny the Counsel for the General Counsel's Motion, and remand the proceedings to Region 31 for an evidentiary hearing. NSC Response 5. Thereafter, the Counsel for the General Counsel filed a Reply to the Employer's Response, in which Counsel for the General Counsel claimed that the Sub Zero line of cases was "a limited number of cases in which the Board has departed from its longstanding rule against relitigation of representation matters in subsequent unfair labor practice proceedings", and further claimed that those cases "involved facts and considerations that are not present here." Reply to NSC Response 2.

On November 5, 2018, the Employer also filed an Amended Answer to the Consolidated Complaint, in which the Employer incorporated its prior Answer, but additionally alleged eight affirmative defenses to the Consolidated Complaint. Amended Answer 1-3. The eight affirmative defenses raised by the Employer track the eight Objections to the December 6, 2017 election that were filed by the Employer. See Amended Answer 1-3. In response, Counsel for the General Counsel argued that the affirmative defenses raised by the Employer's Amended Answer constituted attempts by the Employer to "relitigate issues from the representation case", and contended that the Amended Answer did not raise "any issues of material fact or warrant denying summary judgment." Reply to NSC Response 3.

On February 14, 2019, the Board issued the instant Decision, in response to which the Employer files this Motion for Reconsideration. The Board took official notice of the record developed in the representation case proceedings, but held that "all representation issues raised by the Respondent were or could have been litigated in the prior representation proceedings." Decision 1. The Board further held that the Employer had not offered to adduce at hearing any "newly discovered" or "previously unavailable" evidence, and had not shown "special circumstances" warranting a reexamination of the Board's decision in the representation case proceedings, and therefore concluded that the Employer "had

not raised any representation issue that is properly litigable in this unfair labor practice proceeding." Decision 1. The Board further held that Sub Zero Freezer Co. and St. Francis Hospital "are two of a limited number of cases in which the Board has departed from the rule that, in a certification-testing unfair labor practice case, issues that had been presented to and decided by the Board in a prior, related representation case cannot be relitigated and will not be reconsidered", and declined to depart from what it deemed the Board's "longstanding rule". Decision 1, FN 2.

SUMMARY OF ARGUMENT

The Board should reconsider its Decision in the instant case because it has committed material error, both with regard to its analysis of the facts in this case, and the application of the Board's precedent to those facts. First, the Board's factual findings in its Decision constitute material error, because they are unsupported by the underlying record. Second, the Board's failure to adequately address the Sub Zero line of Board precedent, and the Board's related failure to explain why the Sub Zero line of precedent should not apply to the case at bar, constitute arbitrary and capricious decision-making in violation of the Administrative Procedure Act (hereafter the "APA"), and thus material error on the part of the Board. Finally, if the Board had not issued its erroneous Decision, and had instead undertaken an appropriate and necessary review of the underlying,

related representation proceedings, the Board would have vacated the Board's Decision in that case and Regional Director's Decision and Certification of Representative, and would have additionally set aside the underlying election. For all these reasons, the Employer urges the Board to grant its Motion for Reconsideration, review the related representation case proceedings, and on the basis thereof, vacate the Board's Decision denying the Employer's Request for Review and the Regional Director's Decision and Certification of Representative, and to set aside the underlying December 6, 2017 election. Additionally, and relatedly, the Employer respectfully requests that, as the Union was thus not ever validly certified as the collective bargaining representative of the employees at issue, the instant Charges be dismissed.

ARGUMENT

1.) The Board's Factual Findings Constitute Material Error

In its Decision, the Board commits material error by determining that the Employer was not entitled to review, in this case, of the related, underlying representation proceedings. First, while noting that it had taken "official notice" of the record developed in the related representation case proceedings, the Board's Decision makes apparent that the Board did not engage in any meaningful review of that record, which materially defeats the purpose of taking administrative notice of the record, in the first instance. Similarly, the Board's failure to address, let

alone investigate, the affirmative defenses raised by the Employer's Amended Answer constitute a further material error with regard to the Board's processing of this case, as well as material error with the Board's ultimate factual finding that the Employer was provided with a thorough and complete opportunity to litigate its issues with the underlying representation proceedings.

Furthermore, the Board committed material error by reaching the factual conclusion that the Employer had been presented with an opportunity to litigate its contentions regarding the underlying representation proceedings in the representation case, where that assertion is proven patently untrue by the record of which the Board claimed to have taken administrative notice. First, the Employer was foreclosed from litigating in any fashion all but one of its Objections, by dint of not only the Board's unlawful and discriminatory revised election rules, but also because of the Regional Director's erroneous rulings in connection therewith. Additionally, with regard to Objection No. 2, which the Regional Director set for hearing, the erroneous and highly prejudicial rulings of the Hearing Officer and the Regional Director wholly prevented the Employer from litigating its Objection. Accordingly, the Board's factual finding that the Employer had been presented with what the Board essentially claimed to be sufficient due process in the representation case proceeding is entirely disproven by the underlying record. Thus, in light of both the Board's procedural errors, and the Board's erroneous

factual findings, the Board should vacate its Decision, undertake meaningful review of the representation record and investigation of the Employer's affirmative defenses, and as a result, vacate the election and the Regional Director's Decision and Certification, and dismiss the instant Charges.

2.) The Board's Failure to Adequately Address Board Precedent Violates the Administrative Procedure Act and Constitutes Material Error

In addition to the material error related to the Board's factual finding that the Employer had been provided a full and fair opportunity to litigate the issues with the December 6, 2017 election during the course of the representation proceedings, the Board further erred by failing to adequately explain or address its continued maintenance of the Sub Zero line of cases as extant law, in circumstances where it refuses and / or declines to apply the precedent to cases such as the instant case. The Board's failure to adequately explain its reasoning with regard to Sub Zero and its progeny constitutes a violation of the APA, and thus renders the conclusion that the Board's Decision in this case is imbued with material error. To the extent the Board continues to maintain the Sub Zero line of cases for potential application in similar factual circumstances, the Board's Decision still violates the APA and commits material error, inasmuch as the Board wholly fails to explain why the case at bar does not, on the basis of its factual similarity to Sub Zero Freezer, warrant the use of the procedure outlined in that case.

The APA requires that the Board's exercise of its authority not be "arbitrary, capricious, or an abuse of discretion." 5 U.S.C. §706 (2)(A); Allentown Mack Sales and Service, Inc. v. NLRB, 522 U.S. 359, 377 (1998); Sever v. NLRB, 231 F.3d 1156, 1163 (9th Cir. 2000). The Board's failure to explain a departure or deviation from precedent has long held to be an arbitrary and capricious action on the part of the Board, in violation of the APA. Id.; See Also, International Ass'n of Machinists and Aerospace Workers v. NLRB, 759 F.2d 1477, 1478 (9th Cir. 1985), *citing* Consolidated Papers, Inc. v. NLRB, 670 F.2d 745, 757 (7th Cir. 1982); Westinghouse Electric Corp. v. NLRB, 506 F.2d 668, 669 (6th Cir. 1974). Similarly, where the Board errs in its application of established law to the facts of a case, it has engaged in arbitrary and capricious action in violation of the APA. Wayneview Care Center v. NLRB, 664 F.3d 341, 348 (D.C. Cir. 2011).

In 1984, the Board decided Sub Zero Freezer Co., 271 NLRB 47 (1984). In that case, the complaint alleged that the employer was refusing to recognize and bargain with the union, who had been certified by the Board several months prior. Sub Zero at 1. The General Counsel filed a Motion for Summary Judgment, and the Board thereafter issued an order transferring the proceedings to the Board and a Notice to Show Cause why the Motion for Summary Judgment should not be granted. Id. In its response to the Notice to Show Cause, the employer argued that conduct that occurred during the pre-election period in the underlying

representation proceedings, namely threats to employees and property damage, interfered with the election and required the setting aside of the underlying election, which the union had won by a narrow, two-vote margin. Id. The General Counsel responded that all material issues were presented to the Board during the course of the underlying representation proceedings. Id.

In its decision, the Board in Sub Zero concluded that "conduct occurred which resulted in an atmosphere of fear and reprisal such that a free and fair election could not be conducted." Sub Zero at 2. "Having reached this conclusion", the Board held that the union's certification could not stand where the election was thus invalid. Id. Noting the divergent lines of Board precedent, the Board held that "while reconsideration of issues in technical refusal-to-bargain cases may, in some instances, cause delays or involve changes in Board law, we are not willing to grant a Motion for Summary Judgment that would result in an order requiring an employer to bargain with a union that has not attained the status of majority representative from a free and fair election." Id. On these grounds, the Board vacated the Board's Decision and Order in the representation case, dismissed the complaint in the proceedings then before the Board, revoked the certification issued to the union, and remanded the case for direction of a new election, if desired by the union. Id.

Thereafter, in St. Francis Hospital, Heuer International Trucks, and Atlantic Hilton & Towers, decided in August of 1984, December of 1984, and August of 1985, respectively, the Board again denied the General Counsel's Motions for Summary Judgment in technical refusal-to-bargain cases, because the Board determined that the questions of the appropriateness of the bargaining units that had been certified, which in all cases had been litigated without success by the employers during the underlying representation proceedings, warranted the Board's reconsideration. 271 NLRB 948, 949 (1984); 273 NLRB No. 57, 1 (1984); 273 NLRB 87, 91. In St. Francis, the Board distinguished the application Pittsburgh Glass Co. v. NLRB, 313 U.S. 146, 162 (1941), by explaining that the Supreme Court's decision did not "preclude the Board from reconsidering its own earlier action." St. Francis at 949. Similarly, in Heuer, the Board openly admitted that it was permitting relitigation of unit determination, but stated that the General Counsel's Motion for Summary Judgment could not be granted where a conflict existed regarding the appropriateness of the bargaining unit that had been certified, and decided to reconsider that issue. Heuer at 1. Finally, in Atlanta Hilton, the Board held that the units found appropriate by the Regional Director were not appropriate units, and therefore dismissed the union's petitions for election, revoked the union's certifications, and dismissed the complaint before them.

Atlanta Hilton at 91. Since issuing these decisions in 1984 and 1985, the Board has never explicitly overruled Sub Zero or its progeny.

In the instant case, the Board failed to explain in any way, shape, or form, why it declined to apply the Sub Zero line of precedent in the case at bar. Nor did the Board's Decision provide any explanation whatsoever for why the Board has continued to maintain the Sub Zero line of cases as valid law, rather than overruling those cases, in circumstances where it rarely applies those precedents and has in some circumstances declined to apply them upon reliance of the vaguest of rationales. Pursuant to the requirements of the APA, the Board must contend with its clearly-deviating precedents on the question of the appropriateness of the litigation of representation issues in technical refusal-to-bargain unfair labor practice proceedings – it may not be permitted to continue to maintain two positions on the subject that it can apply at will, with no preceding notice to the labor organizations and employers who appear before it. Because the Board's Decision achieves precisely this result, it is materially erroneous, and violates the APA, and thus must be reconsidered by the Board.

Furthermore, even if the Board maintains that the Sub Zero line of cases is not in material conflict with the cases cited by the Board and the General Counsel in their Decision and Motion for Summary Judgment, which stand for the proposition that a party may not litigate representation case issues in an unfair

labor practice proceeding because the Sub Zero line of cases is factually distinguishable, the Board's Decision is still in violation of the APA and warrants reconsideration, because the Board has not explained how the substantially similar facts present in the instant case preclude the application of the Sub Zero line of cases to the case at bar. Both the instant case and all of the Sub Zero line of cases present identical technical refusal-to-bargain charges and matching procedural histories. Both the instant case and Sub Zero contend with serious questions of voter harassment and intimidation in instances where the union won by the narrowest of margins – in fact, by exactly two votes, in both cases. Furthermore, the case at bar and St. Francis, Heuer, and Atlanta Hilton all grapple with questions of the appropriateness of the bargaining unit certified by the Regional Director. Thus, by failing to address the factual similarities between the cases, let alone identify any compelling factual distinctions between the cases, the Board has failed to exercise its authority within the confines of the APA, and has thus committed material error. Accordingly, for both reasons related to the Decision's mishandling of the Sub Zero line of precedent, the Board should grant the Employer's Motion for Reconsideration, vacate the Decision, apply the Sub Zero precedent to the case at bar, and therefore review and vacate the underlying representation proceedings, including the Board's prior Decision in the representation case, the Regional

Director's Decision and Certification of Representative, and the December 6, 2017 election.

3.) The Underlying Representation Case is Rife with Material Error

If, for any of the compelling reasons outlined above, the Board grants the Employer's Motion for Reconsideration, vacates the Board's Decision, and reviews the related representation proceedings in the instant case, the Board will quickly determine that the representation proceedings are themselves rife with material error that require the Board to vacate the Board's Decision denying the Employer's Request for Review and the Regional Director's Decision and Certification of Representative, and to set aside the underlying election. As the Employer's Objections, Exceptions to the Hearing Officer's Report, and Request for Review of the Regional Director's Decision and Certification of Representative all make clear, the factual findings and legal conclusions that resulted in the Union being certified as the collective bargaining representative of the Employer's employees were all fundamentally flawed, and each of the Employer's arguments, standing alone, warrants the vacation of the Board's Decision and the Regional Director's Decision and Certification of Representative, and the setting aside of the December 6, 2017 election.

First, the Regional Director's decision to overrule Employer Objection Nos. 1 and 6, as affirmed by the Board, which alleged an affiliation between the Union

and the IAMAW that was never disclosed to eligible voters that affected the validity of the election, was unsupported by Board precedent, and ignored substantial evidence of affiliation set forth by the Employer's Offer of Proof. Second, for the reasons discussed in detail herein, the Hearing Officer and Regional Director's prejudicial and erroneous rulings concerning the Employer's rights to present evidence in support of Objection No. 2 – the very serious contention that the Union and / or the IAMAW had engaged in harassment and intimidation of eligible voters – which were affirmed by the Board, separately warrants the vacation of the underlying representation case proceedings. Next, the Board Agent's failure to adequately police the polling area and the actions of the Union's observer during the election, and the Board Agent's misrepresentation to eligible voters of the Board's challenged ballot procedures, as set forth in Employer's Objection Nos. 3 4, and 5, should have each been the subject of an evidentiary hearing, and should have each independently been grounds upon which the Regional Director and / or the Board set aside the December 6, 2017 election. Furthermore, the Regional Director and the Board both erred by thoroughly eschewing their obligations to ensure that the unit sought, and ultimately certified, by the Board did not include with non-guard members those employees defined as guards by Section 9(b)(3) of the Act, as set forth in Employer's Objection No. 7. Finally, in response to Employer's Objection No. 8, both the Regional Director and

the Board erred by failing to recognize the unlawful application of the Board's revised election rules, both as a facial matter, and as applied to the facts of the underlying representation proceedings.

Accordingly, in the event that the Employer's Motion for Reconsideration in this case is granted, it is appropriate not only for the Board not only to vacate its instant Decision, but also for the Board to review the representation proceedings, and in recognition of the multitudinous material errors committed therein, additionally vacate the Board's Decision denying the Employer's Request for Review, the Regional Director's Decision and Certification or Representative, and the results of the December 6, 2017 election.

CONCLUSION

For all the reasons stated herein, the Employer urges the Board to grant its Motion for Reconsideration, review the related representation case proceedings, and on the basis thereof, vacate the Board's Decision denying the Employer's Request for Review and the Regional Director's Decision and Certification of Representative, and to set aside the underlying December 6, 2017 election. Additionally, and relatedly, the Employer respectfully requests that, as the Union was thus not ever validly certified as the collective bargaining representative of the employees at issue , the instant Charges be dismissed.

Dated: Mount Pleasant, South Carolina
March 14, 2019

Respectfully submitted,

/s

Kaitlin A. Kaseta
Counsel for the Hospital
1809 Carolina Park Boulevard
Mount Pleasant, SC 29466
(860) 307-3223
kkaseta@carmodyandcarmody.com

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

RADNET MANAGEMENT, INC. d/b/a SAN FERNANDO VALLEY INTERVENTIONAL RADIOLOGY AND AND IMAGING CENTER	:	Case No. 31-CA-222587
	:	Case No. 31-CA-225390
and	:	
RADNET MANAGEMENT, INC. d/b/a SAN FERNANDO ADVANCED IMAGING CENTER	:	
and	:	
NATIONAL UNION OF HEALTHCARE WORKERS	:	

CERTIFICATE OF SERVICE

The Undersigned, Kaitlin A. Kaseta, being an Attorney duly admitted to the practice of law, does hereby certify, pursuant to 28 U.S.C. § 1746, that the Employer's Motion for Reconsideration of Board's Decision and Order was served on Thursday, March 14, 2018 upon the following:

Florice Hoffman
Law Office of Florice Hoffman, L.C.
8502 E. Chapman Avenue, Suite 353
Orange, CA 92869-2461
fhoffman@socal.rr.com

Christine Flack
Counsel for the General Counsel

National Labor Relations Board, Region 31
11500 West Olympic Boulevard, Suite 600
Los Angeles, California 90064-1524
Christine.Flack@NLRB.Gov

Dated: Mount Pleasant, SC
March 14, 2018

Respectfully submitted,

/s

Kaitlin A. Kaseta
Counsel for the Employer
1809 Carolina Park Boulevard
Mount Pleasant, SC 29466
(860) 307-3223
kkaseta@carmodyandcarmody.com